

Fact Sheet



U.S. Department of Labor
Employee Benefits Security Administration
(formerly the Pension and Welfare Benefits Administration)
April 2003

Reservists Being Called to Active Duty

Reserve and National Guard units called to active duty have rights with respect to the retirement and health benefits provided by their private-sector employers as they prepare to be deployed. This fact sheet provides questions and answers for reservists about their rights protecting their retirement benefits and the health benefit options available to their family members to maintain health coverage during the time of active duty.

The Department of Labor's Employee Benefits Security Administration (EBSA) administers the laws related to private sector employee benefit plans, including the Consolidated Omnibus Reconciliation Act (COBRA), the Health Insurance Portability and Accountability Act (HIPAA) and the Employee Retirement Income Security Act (ERISA). In addition, the Department of Labor's Veterans' Employment and Training Service can provide information on the Uniformed Services Employment and Reemployment Rights Act (USERRA), which provides reservists with many rights beyond those related to employee benefits.

Q. I am being called to active duty and have questions about my employer provided pension and health benefits. Where can I get more information about my benefits?

The Department of Labor's Veterans' Employment and Training Service (VETS) has information for veterans, National Guard, or reservists who may be activated for military service. National Guard and reserve members called to active duty, and their civilian employers, have certain rights and responsibilities under the Uniformed Services Employment and Reemployment Rights Act (USERRA). VETS has developed a fact sheet and an interactive computer program, the USERRA Advisor, which address the rights and responsibilities of individuals and their employers under the law. These tools, and other USERRA information, can be found on the VETS Web site at www.dol.gov/vets.

Health Benefits Questions and Answers

Q. My family had health coverage through my employer when I was called for active duty in the military. What are my rights to health coverage now?

If you are on active duty for more than 30 days, you and your dependents should be covered by military health care. For more information on these programs contact your military unit.

In addition, two laws protect your right to continue health coverage under an employment-based group health plan. The Consolidated Omnibus Budget Reconciliation Act (COBRA) provides health coverage continuation rights to employees and their families after an event such as a reduction in employment hours. USERRA is intended to minimize the disadvantages that occur when a person needs to be absent from civilian employment to serve in the uniformed services.

Both COBRA and USERRA generally allow individuals called for active duty to continue coverage for themselves and their dependents under an employment-based group health plan for up to 18 months. If military service is for 30 or fewer days, you and your family can continue coverage at the same cost as before your short service. If military service is longer, you and your family may be required to pay as much as 102 percent of the full premium for coverage. You should receive a notice from your plan explaining your rights.

Finally, another law known as the Health Insurance Portability and Accountability Act (HIPAA) may give you and your family rights to enroll in other group health plan coverage if it is available to you (for example, if your spouse's employer sponsors a group health plan). You and your family have this opportunity to enroll regardless of the plan's otherwise applicable enrollment periods.

However, to qualify, you must request enrollment in the other plan (for example, your spouse's plan) within 30 days of losing eligibility for coverage under your employer's plan. After special enrollment is requested, coverage is required to be made effective no later than the first day of the first month following your request for enrollment. If you are on active duty more than 30 days, coverage in another plan through special enrollment is often cheaper than continuation coverage because the employer often pays a part of the premium. For more information on the interaction of COBRA and HIPAA, see IRS Notice 98-12: *Deciding Whether to Elect COBRA Health Care Continuation Coverage After the Enactment of HIPAA* on EBSA's Web site at www.dol.gov/ebsa under Publications or call toll-free 1-866-444-EBSA (3272) for a free copy.

***Note:** When considering your health coverage options, you should examine the scope of the coverage (including benefit coverage and limitations, visit limits, and dollar limits), premiums, cost-sharing (including co-payments and deductibles), and waiting periods for coverage.*

Q. If one of my dependents wants to continue with a current doctor or hospital, can I elect COBRA continuation coverage for only that dependent?

Yes. You and each of your dependents have a separate, individual right to elect continuation coverage.

Q. My family was already on COBRA when I was called for active duty. Can we keep our COBRA coverage?

Yes. COBRA continuation coverage cannot be terminated because a reservist receives health coverage as an active duty member of the uniformed services and a reservist's family receives health coverage under a government program such as TRICARE.

Q. My family and I had health coverage under my employer's group health plan before I was called for active duty. We let this coverage lapse while I was away and took military health coverage. When I return to my employer from active duty, what are our rights to health coverage under my old plan?

Under USERRA, you and your family should be able to reenter your employer's health plan. In addition, your plan generally cannot impose a waiting period or other exclusion period if health coverage would have been provided were it not for military service. The only exception to USERRA's prohibition of exclusions is for an illness or injury determined by the Secretary of Veterans Affairs to have been incurred in, or aggravated during, performance of service in the uniformed services, which is covered by the military health plan.

Q. Where can I get more information on COBRA, HIPAA, and USERRA?

For more information on your health benefits rights and options, and the interaction of COBRA and HIPAA, find to the following publications on the EBSA Web site at www.dol.gov/ebsa under Publications:

- *Q's & A's: Recent Changes in Health Care Law*
- *Health Benefits under the Consolidated Omnibus Budget Reconciliation Act (COBRA)*
- *Pension and Health Coverage - Q&As for Dislocated Workers*
- *IRS Notice 98-12: Deciding Whether to Elect COBRA Health Care Continuation Coverage After the Enactment of HIPAA*

You may also call EBSA's toll-free number at **1-866-444-EBSA (3272)** to request one or more copies of the publications or to speak with a benefits advisor. You may also contact EBSA electronically at www.askebsa.dol.gov.

Additional health information for military personnel and their families is also available through publications on additional Web sites:

- IRS Notice 90-58: *Continuation of Employer Health Coverage for Activated Reservists and Their Families* at
 - www.dol.gov/ebsa/pdf/irs90-58.pdf
- DefenseLINK News: Mobilized Reservists May Retain Employers' Family Health Care at www.defense link.mil/news
- TRICARE Offers Benefits to Activated Reservists and National Guard Members at www.tricare.osd.mil/reserve
- Frequently Asked Questions on TRICARE at www.tricare.osd.mil/frequentlyaskedquestions

For information on USERRA, contact the Department of Labor's Veterans' Employment and Training Service (VETS) office nearest you. Find the office on the VETS Web site at www.dol.gov/vets.

You can also visit the USERRA Employee/Employer Advisor on the VETS Web site. This interactive program has been designed to answer questions about the rights and responsibilities for both employees and employers.

Retirement Benefits Questions and Answers

Q. Will my period of active duty be considered a break in service with my employer and impact my eligibility to participate in my employer's retirement plan or my vesting or benefit accrual under the plan?

No. USERRA requires that the period of military duty be counted as covered service with the employer for eligibility, vesting, and benefit accrual purposes. Returning service members are treated as if they had been continuously employed regardless of the type of retirement plan the employer has adopted. However, a person who is reemployed is entitled to accrued benefits resulting from employee contributions only to the extent that he or she actually makes the contributions to the plan.

Q. While I am on active duty, is there a requirement for my employer to continue to make employer contributions to my 401(k) plan?

There is no requirement for your employer to make contributions to your 401(k) plan while you are on active duty. However, once you return from military duty and are reemployed, your employer must make the employer contributions that would have been made if you had been employed during the period of military duty. If employee contributions are required or permitted under the plan, the employee has a period equal to three times the period of military duty or 5 years, whichever ends first, to make up the contributions. If the employee makes up the

contributions, the employer must make up any matching contributions. There is no requirement that the employer contributions include earnings or forfeitures that would have been allocated to the employee had the contributions been made during their military service.

- Q. I am a participant in a 401(k) plan. While I am on active duty, may I give my spouse or another individual the authority to change my investment allocations through a power of attorney or other legal document? Can that individual also apply for a participant loan or hardship withdrawal on my behalf?**

The terms of the plan would generally govern this situation. However, if some employees are permitted to designate individuals to act on their behalf in other contexts when they are away from work, the employer should permit the service member to designate someone to act on his or her behalf.

- Q. I have heard that members of the uniformed services can participate in the Thrift Savings Plan that the Federal government has for civilian employees. Where can I get information about that?**

The Thrift Savings Plan Web site at www.tsp.gov provides information about the benefits available to TSP participants. Members of the uniformed services will participate under most of the same rules and receive the same benefits as civilian TSP participants. However, the contribution rules are different for uniformed services members.

Because the TSP record keeper must maintain separate accounts for civilian and uniformed services participants, participants who are both Federal civilian employees and uniformed services members (i.e., reservists) may have two separate accounts. If you have two accounts, you will need to review information about your accounts separately in the civilian and the uniformed services sections of this Web site.

A booklet entitled *Summary of the Thrift Savings Plan for the Uniformed Services* is available on the TSP Web site.

- Q. Under the Soldiers' and Sailors' Civil Relief Act, creditors are required to drop interest charges down to 6 percent on debt owed by those called to active duty. Does this apply to a loan from my pension plan?**

Yes. Under the Soldiers' and Sailors' Civil Relief Act (SSCRA), creditors, including a pension plan, are required to drop interest rates down to no more than 6 percent on debt owed by those entering military service for the period of such military service. Further, under the Employee Retirement Income Security Act (ERISA), the loan will not fail to be a qualified loan under ERISA solely because the interest rate is capped by SSCRA. Under SSCRA, a plan fiduciary could petition a court to retain a higher rate based upon the individual's ability to pay.

Under USERRA, a plan may, but is not required to, suspend the obligation to make regular loan repayments to the plan during the period of active military service.

Q. If I prefer that the interest rate remain higher so that I can accumulate more money in my pension plan, is the plan administrator required to comply with the Soldiers' and Sailors' Civil Relief Act and unilaterally reduce the rate?

A plan fiduciary could petition a court to retain a higher rate based upon the individual's ability to pay. Absent an order from the court, however, the plan fiduciary would be obligated to reduce the interest rate.

For more information about retirement benefits, you may obtain copies of the publications mentioned by calling the EBSA toll-free number at **1-866-444-EBSA (3272)** or visiting EBSA's Web site at **www.dol.gov/ebsa**. If you have questions, you can call the toll-free number or contact EBSA electronically at **www.askebsa.dol.gov**.

* This fact sheet has been developed by the U.S. Department of Labor, Employee Benefits Security Administration, Washington, DC 20210. It will be made available in alternate formats upon request: Voice phone: (202) 693-8664; TTY: 1-202-501-3911. In addition, the information in this fact sheet constitutes a small entity compliance guide for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.